

IN THE INCOME TAX APPELLATE TRIBUNAL
“A” Bench, Mumbai
Before Shri B.R. Baskaran (AM)& Shri Amit Shukla (JM)

I.T.A. No. 4549/Mum/2014
(Assessment Year 2007-08)

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| M/s. Aditya Birla Minacs Worldwide Ltd. (Aditya Birla Minacs Technologies Ltd. since merged with Aditya Birla Minacs Worldwide Ltd.) Symphony IT Park 8 th , 9 th & 10 th Floor Chandivali Farm Road Chandivali, Andheri (E) Mumbai-400 072. (Appellant) | Vs. | ACIT 8(1) Room No. 210 2 nd Floor Aayakar Bhavan M.K. Road Mumbai-400 020. (Respondent) |
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PAN No.AABCB5075A

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| Assessee by | Shri Ronak G. Doshi |
| Department by | Shri A. Ramachandran |
| Date of Hearing | 2.8.2016 |
| Date of Pronouncement | 2.8.2016 |

ORDER

Per B.R. Baskaran (AM) :-

The appeal filed by the assessee is directed against the order dated 25.3.2014 passed by learned CIT(A)-16, Mumbai and it relates to A.Y. 2007-08.

2. The assessee is aggrieved by the decision of learned CIT(A) in confirming the disallowance of ₹ 71.49 lakhs made by the Assessing Officer u/s. 40(a)(ia) of the Act for non deduction of tax at source u/s. 194-I of the Act on reimbursement of rent and parking charges made by the assessee to its holding company.

3. Learned counsel appearing for the assessee submitted that the assessee is a subsidiary of a company named M/s. PSI Data System Limited. The

holding company had taken premises on rent from another company named M/s. Golflinks Software Park Pvt. Limited (hereafter "Goff links"). The assessee entered into a Memorandum of Understanding with its holding company on 1.4.2006, as per which the assessee company would occupy a portion of the premises taken on lease by the holding company and the holding company shall apportion the rent payment with the assessee company in the ratio of space actually utilised by the assessee. It was also provided that all statutory liabilities in relation to rental facilities such as TDS, service tax are the responsibilities of the holding company. Accordingly, during the year under consideration the assessee reimbursed a sum of ₹ 71,49,545/- to its holding company as its share of rental expenditure incurred by the holding company. The assessee did not deduct tax at source from the said payment on the reasoning that the liability to deduct tax at source from the rent payment paid to the landlord was taken up by the holding company. The land lord, M/s Golf links, had obtained a no deduction certificate u/s. 197(1) of the Act and hence holding company did not deduct tax at source from the rent paid by it to Golflinks Software Parke Pvt. Limited. The holding company M/s. PSI Data System Limited had also obtained no deduction certificate for payments issued u/s. 194A, 194C & 194J. It was submitted that holding company was under bonafide impression that the reimbursement of rent received from the assessee would not form part of its income in its hands and hence it did not obtain specific certificate for 194-I of the Act. The Assessing Officer did not agree with the contentions of the assessee and accordingly took the view that the assessee should have deducted tax at source on the rent paid by it to its holding company. Accordingly, the Assessing Officer disallowed rental claim of the assessee by invoking provisions of section 40(a)(ia) of the Act. Learned CIT(A) also confirmed the same.

4. The Ld A.R submitted that the assessee has not entered into any rental agreement with the land lord and it is the holding company which has taken the premises on rent. He submitted that the assessee has only reimbursed the

proportionate cost to the holding company. He further submitted that the responsibility to deduct TDS on the rent is placed upon the holding company only. He submitted that an identical issue was considered by the Co-ordinate bench of Tribunal in the case of Prime Broking Company (I) Ltd Vs. ACIT (ITA No.6627/Mum/2010 dated 19-10-2012) and the Tribunal held that the provisions of sec. 194I shall not apply to reimbursement of rent. He submitted the decision rendered by the Tribunal has since been upheld by the Hon'ble Mumbai High Court, vide its order dated 9th June, 2015 reported in 2015-TIOL-1472-HC-Mum-IT. He submitted that, in paragraph 7 of the order of the High Court, the relevant provisions have been stated as 195, whereas the Tribunal has adjudicated the issue with reference to sec. 194I only.

5. The Ld A.R further submitted that the holding company has declared the reimbursements in its books of account and its assessment for the year under consideration has also been completed accepting the return of income. By placing reliance on the decision rendered by Hon'ble Delhi High Court in the case of CIT Vs. Ansal Land Mark Township (P) Ltd (377 ITR 635), the Ld A.R submitted that the second proviso to 40(a)(ia) is declaratory and curative in nature. He further submitted that the Hon'ble Delhi High Court has held in the above said case that the disallowance u/s 40(a)(ia) cannot be made if the payee had filed return of income and offered sum received from the assessee to tax.

6. On the contrary, the Ld D.R placed strong reliance on the order passed by Ld CIT(A). He submitted that the payment made by the assessee has ultimately reached the hands of the land lord through the holding company and hence the assessee should have deducted tax at source from the said payment.

7. We have heard the rival contentions and perused the record. There is no dispute with regard to the fact that the rental agreement has been entered

between the holding company and M/s Golf links. As per the MOU entered between the assessee and the holding company, the assessee is liable to bear the cost of rent on proportionate basis, i.e., proportionate to the space occupied by it. Accordingly the assessee has paid the proportionate rent to its holding company. However, the tax authorities have taken the view that the assessee has paid the rent to the land lord and the holding company has acted as conduit only. However, the fact remains that the rental agreement has been entered between the holding company and the land lord and hence the inference so drawn by the tax authorities is against the facts available on record.

8. We notice that an identical issue was considered by the co-ordinate bench of Tribunal in the case of Prime Broking Co (I) Ltd (supra) and the Tribunal has taken the view that the TDS u/s 194I is not required in respect of reimbursements. The decision rendered by the co-ordinate bench has since been upheld by the Hon'ble Bombay High Court.

9. We further notice that the return of income filed by the holding company for the year under consideration has been accepted. Since the payment received from the assessee towards rent has been offered in the return of income filed by the holding company, the provisions of sec. 40(a)(ia) cannot be applied to the case of the assessee as per the second proviso thereto, which is held to be retrospective by the Hon'ble Delhi High Court in the case of Ansal Land Mark Township (P) Ltd (supra). Accordingly we find merit in the contentions of the assessee.

10. In view of the foregoing discussions, we set aside the order passed by Ld CIT(A) on this issue and direct the AO to delete the addition made u/s 40(a)(ia) of the Act relating to rent reimbursements.

11. In the result, the appeal filed by the assessee is allowed.
Order has been pronounced in the Court on 2.8.2016

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

Sd/-
(B.R.BASKARAN)
ACCOUNTANT MEMBER

Mumbai; Dated : 2/8/2016

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai

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